



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2019-0065; FRL-9991-56-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;
Delegation of Authority of the Federal Plan for Existing Sewage Sludge Incineration Units**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of and is codifying approval of a request submitted by the Pennsylvania Department of Environmental Protection (PADEP) for delegation of authority to implement and enforce the Federal plan for existing affected Sewage Sludge Incineration (SSI) units. The Federal plan establishes emission limits and monitoring, operating, and recordkeeping requirements for SSI units constructed on or before October 14, 2010. A Memorandum of Agreement (MOA) was signed on January 25, 2019 by PADEP Secretary; Patrick McDonnell. This MOA constitutes the mechanism for the transfer of authority from the EPA to the air pollution control agency. The MOA became effective upon signature by Regional Administrator; Cosmo Servidio on March 1, 2019. The MOA delineates policies, responsibilities, and procedures by which the Federal plan will be administered and enforced by the PADEP, as well as the authorities retained by EPA.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2019-0065. All documents in the docket are listed on the <http://www.regulations.gov> website. Some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additionally available information.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Gordon, Office of Permits and State Programs (3AP10), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215)814-2039. Mr. Gordon can also be reached via electronic mail at gordon.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the Clean Air Act (the “CAA” or “Act”), titled “Solid Waste Combustion,” requires EPA to develop and adopt standards for solid waste incineration units pursuant to sections 111(d) and 129 of the Act. On March 21, 2011, EPA promulgated new source performance standards (NSPS) and emissions guidelines (EG) for SSI units located at wastewater treatment facilities designed to treat domestic sewage sludge. *See* 76 FR 15372. Codified at 40 CFR part 60, subparts LLLL and MMMM, these final rules set limits for nine pollutants under section 129 of the CAA: cadmium (Cd), carbon monoxide (CO), hydrogen chloride (HCl), lead (Pb), mercury (Hg), nitrogen oxides (NO_x), particulate matter (PM), polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDDs/PCFDs), and

sulfur dioxide (SO₂). The EG apply to existing SSI units, which are those units that commenced construction on or before October 14, 2010. *See* 40 CFR 60.5060.

CAA section 129 also requires each state in which SSI units are operating to submit a plan to implement and enforce the EG with respect to such units. State plan requirements must be “at least as protective” as the EG and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B. The SSI EG include a model rule that states may use to develop their own plans.

On April 29, 2016, EPA finalized a Federal plan that implements the EG in states that do not have an approved state plan. *See* 81 FR 26040. EPA implementation and enforcement of the Federal plan is viewed as an interim measure until states assume their role as the preferred implementers of the EG requirements stipulated in the Federal plan. Accordingly, EPA encourages states to either develop their own plan (the EG model rule or the Federal plan can be used as a template to reduce the effort needed to develop a plan), or to request delegation of the Federal plan, as PADEP has done. State plans and requests for delegations of authority that have been approved by EPA are reflected in the Code of Federal Regulations at 40 CFR part 62, subparts B through DDD.

II. Summary of Action and EPA Analysis

On September 12, 2016, PADEP requested delegation of authority from EPA to implement and enforce the Federal plan for existing SSI units, codified at 40 CFR part 62 subpart LLL. The scope of the request from PADEP included all affected facilities within the Commonwealth of Pennsylvania, except Allegheny County and the City of Philadelphia.

EPA evaluates requests for delegation of the SSI Federal plan pursuant to the provisions of the SSI Federal plan (*See* 40 CFR 62.15865) and the EPA's Delegations Manual. Pursuant to the SSI Federal plan, a state may meet its CAA section 111(d)/129 obligations by submitting an acceptable written request for delegation of the Federal plan that includes the following elements: (1) a demonstration of adequate resources and legal authority to administer and enforce the Federal plan; (2) an inventory of affected SSI units, an inventory of emissions from affected SSI units, and provisions for state progress reports (*See* 40 CFR 60.5015(a)(1), (2) and (7) from the SSI EG); (3) certification that the hearing on the state delegation request, similar to the hearing for a state plan submittal, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission; and (4) a commitment to enter into a MOA with the Regional Administrator that sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority. *See* 40 CFR 62.15865 and 81 FR 26060–61. The PADEP delegation request meets requirements (1) through (4).

Pursuant to EPA's Delegations Manual, item 7-139, Implementation and Enforcement of 111(d)(2) and 111(d)(2)/129(b)(3) Federal Plans, a copy of which is included in the supporting documents for this action, the Regional Administrator is authorized to delegate authority to implement and enforce section 111(d)/129 Federal plans to states. Consistent with these authorities, EPA prepared a MOA between EPA and PADEP which defines policies, responsibilities, and procedures pursuant to the SSI Federal plan by which the Federal plan will be administered by the State. Subsequently, on January 25, 2019, Patrick McDonnell, Secretary of the PADEP, signed the MOA, thus agreeing to the terms and conditions of the MOA and

accepting responsibility for implementation and enforcement of the policies and procedures of the Federal plan, except for certain authorities (e.g., approval of major alternatives to test methods or monitoring) retained by EPA. The MOA became effective upon signature by Regional Administrator; Cosmo Servidio on March 1, 2019. EPA continues to retain enforcement authority along with the PADEP. The delegation of authority is effective on **[insert date 30 days after date of publication in the Federal Register]**.

III. Final Action

In this action, EPA is notifying the public that PADEP is being delegated authority to implement and enforce the Federal plan for SSI units within the Commonwealth of Pennsylvania. The Code of Federal Regulations is being amended at 40 CFR 62.9690 to reflect this delegation.

IV. Good Cause Finding

Section 553(b) of the Administrative Procedure Act (APA) requires publication of notice of proposed rulemaking and specifies what the notice shall include. *See* 5 U.S.C. 553(b).

However, the APA provides an exception from this requirement “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” *See* 5 U.S.C. 553(b)(3)(B).

EPA has found good cause for making today’s action final without prior proposal and opportunity for comment because this ministerial action merely codifies EPA’s delegation of authority to implement and enforce the SSI Federal plan to the PADEP. This action does not alter the universe of sources regulated under the Federal plan, nor does it change the regulatory requirements applicable to those sources. In these circumstances, notice and comment

procedures are unnecessary.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to delegate the authority to implement a 111(d)/129 Federal plan that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 CFR 60.27. In reviewing 111(d)/129 Federal plan delegation requests, EPA's role is to approve state choices, provided that they meet the criteria of the CAA and of EPA's implementing regulations. Accordingly, this action merely codifies in the Code of Federal Regulations EPA's delegation of authority to implement the Federal plan and does not impose additional requirements beyond those imposed by the already-applicable Federal plan. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997); and
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

In addition, this rule is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) because application of those requirements would be inconsistent with the CAA. It also does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This action delegating the SSI Federal plan to the Commonwealth of Pennsylvania does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. As such, it does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 21, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. Add an undesignated center heading and § 62.9690 to subpart NN to read as follows:

AIR EMISSIONS FROM EXISTING SEWAGE SLUDGE INCINERATORS (SSI)—SECTION
111(d)/129 FEDERAL PLAN DELEGATIONS

§ 62.9690

(a) *Identification of plan—delegation of authority.* On March 1, 2019, the EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, Subpart LLL (the “Federal plan”) by which the Federal plan will be administered by the Pennsylvania Department of Environmental Protection (PADEP).

(b) *Identification of sources.* The MOA and related Federal plan apply to all affected SSI units for which construction commenced on or before October 14, 2010.

(c) *Effective date of delegation.* The delegation became fully effective on **[insert date 30 days after date of publication in the Federal Register]**.

[FR Doc. 2019-06487 Filed: 4/16/2019 8:45 am; Publication Date: 4/17/2019]